

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

AUGUST 1, 2007

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, August 1, 2007 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt and Richard Taylor.

Also present were: Peter Ruggiero, Town Solicitor, Gareth Eames, Building Inspector and Sally Ferreira, Court Reporter.

1. A petition has been filed by Mark & Filomena Rego of 227 Riverside Drive, Tiverton, RI requesting an extension to zoning variance granted on September 6, 2006 that allowed the construction of three additions to an existing dwelling and the addition of a second floor onto an existing attached garage on property located at 227 Riverside Drive, Tiverton, RI at, Block 54, Lot 1 closer to the rear and side yard setbacks than is currently allowed in an R40 zone.

DECISION: The Chairman informed the board there was a letter from the petitioners requesting a continuation to the September meeting because they are out of town. Mr. Jackson made a motion to request their continuation. Ms. Krumholz seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Krumholz, Ms. Gescheidt, Mr. Jackson and Mr. Taylor.

2. A petition has been filed by William Hardy of 380 Archer Street, Fall River, MA requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to construct a new single family dwelling located on the east side of Stafford Road being Block 177 Card 63 on Tiverton Tax Assessor's Maps closer to the front yard setback than is currently allowed in a R60 zone.

DECISION: Ron Blanchard president of Site Engineering who prepared the plan and is appearing on behalf of the petitioner stated that the petitioner is asking for a front setback be reduced from the required 40 feet to 24 feet due to the fact there are wet lands in the rear of the property and there are setbacks that apply to the wet lands as well.

The Chairman asked Mr. Blanchard if he is proposing to build the dwelling within the wet lands and Mr. Blanchard responded within jurisdictional wet lands not within the actual wet lands. Mr. Blanchard informed the board a permit is in process with DEM and it was his opinion it would be conditional upon the decision of this Board.

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Ms. Gescheidt asked the petitioner how long he has owned the property and Mr. Hardy responded ten years. The Chairman asked the petitioner if there was a house on the property previously and Mr. Hardy answered in the negative.

Mr. James M. Medeiros of 6 Fairwood Drive was present and stated according to the plans he was allowed to view, the plans showed the lot to the south as vacant. Mr. Medeiros further stated this was not true because he owns the property to the south and his house is on the corner of Fairwood and Stafford roads. Mr. Blanchard apologized for the mistake and stated there was a Class One survey conducted by a registered land surveyor who indicated there is 190 feet there.

Mr. Medeiros also stated there is a small pond buried in the woods. The Chairman took note that there is a pond and stated that is why there are wet lands. Mr. Medeiros agreed. Mr. Blanchard stated he had a biologist visit the property and do flagging. Mr. Hardy stated the pond is completely dry in the summer. Mr. Medeiros stated only in extreme heat.

The Chairman asked Mr. Blanchard if it was possible to build a house on the lot and meet the zoning code and Mr. Blanchard answered in the negative that the envelope just isn't big enough. The Chairman also asked Mr. Blanchard if this was a legal lot of record and Mr. Blanchard answered yes.

Mr. Taylor stated he was concerned that the Comprehensive Plan designates Stafford Road as a major arterial road so at some point Stafford Road may very well have to be widened. Mr. Taylor went on to say if a house is allowed to be built too close to the road, the taxpayers pay to buy the whole house rather than just taking part of the front yard.

Ms. Krumholz made a motion to grant the variance amending the setback from 24 to 25 feet, that the board has found that the petitioner has met all the provisions of the ordinance, that there are conditions unique to the lot that require them not meet the usual setbacks, that it's not contrary to the public interest given the location of other buildings in the vicinity and that denying the petition would create unnecessary hardship. Mr. Jackson seconded the motion. The vote was unanimous. Voting were: Chairman David Collins, Ms. Krumholz, Ms. Gescheidt, Mr. Jackson and Mr. Taylor.

3. A petition has been filed by Christopher Mapes Wharton of 86 Highland Road, Tiverton, RI requesting a variance to Article VI, Section 2.d. of the Tiverton Zoning Ordinance in order to construct an eight foot high fence at 86 Highland Road, Tiverton RI being Block 92 Card 30 on Tiverton Tax Assessor's Maps whereby exceeding the height limitation of a R40 zone.

DECISION: Mr. Wharton was present and stated he would like to erect an 8 foot high fence. The Chairman asked the petitioner why he did not want to erect a 7 foot high fence which is the allowed fence height. Mr. Wharton stated that at present there are hedges upward of 20 feet high that are difficult to maintain which will be removed and the extra foot would block out traffic noise and provide privacy from the neighbor.

Ms. Krumholz asked if the fence was going to be installed in front of the house and Mr. Wharton responded it would be a straight fence installed adjacent to his neighbor from the road directly back to the end of the wet lands.

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Douglas Reed of 96 Highland Road the abutter to the petitioner was present and stated he had no opposition to the installation of the 8 foot high fence. Mr. Reed gave a brief history of his property and Mr. Wharton's property. He stated the hedge was cared for by the previous owners of Mr. Wharton's property although the hedge was owned by the previous owners of Mr. Reed's property until they became too elderly to care for it.

It was Mr. Reed's opinion that the hedge became out of hand and is not salvageable. Mr. Reed went on to say that Mr. Wharton has become accustomed to a certain amount of privacy due to the height and thickness of the hedge. Mr. Reed stated when he informed Mr. Wharton he was going to take down the hedges, Mr. Wharton offered to put up a fence.

Mr. Taylor asked the petitioner how the fence would help the road noise situation. Mr. Wharton explained that his bedroom is on that side. Mr. Wharton went on to say the road noise was just one of the items.

Rosemary Eva asked what the composition of the fence is made of. Mr. Wharton stated it was made of vinyl. Ms. Eva further asked if it would be compatible with the rest of the neighborhood. The Chairman invited Ms. Eva to come up to see the pictures of fencing submitted in the application.

Phyllis Peterson of 1030 South Barrel Cactus Ridge #31 Benson, Arizona administratrix of the Robertshaw Estate stated she has no objection to this petition. Ms. Peterson also stated she thought this was a wonderful project. Ms. Krumholz asked Ms. Peterson where her house was in location to the proposed fence. Mr. Wharton answered Ms. Peterson's property is a few feet from the end of the fence.

Ms. Gescheidt stated the fence would mutually benefit the abutting neighbor's property. Ms. Krumholz voiced her concern that the fence would block the view of the road of cars traveling and cars trying to make turns but after the petitioner described the location of the fence, she does not see a problem.

Mr. Taylor stated there is a reason for a fence height restriction of 7 feet and that in his opinion it is good zoning practice. Mr. Taylor went on to say if 8 foot fences are okay, then it should be changed to 8 feet. The Chairman stated that 7 feet is the standard and if you want more, you have to justify it. Mr. Taylor stated the petitioner's justification was "just because".

Ms. Gescheidt made a motion to grant the petition due to the fact there is an existing hedge that has become unmanageable that will be taken down and those are circumstances that are not of the applicant's creation. Ms. Gescheidt went on to say the neighbors are accustomed to a certain amount of privacy and Ms. Gescheidt does not see how granting this relief in anyway prejudices the public's interest and it is the least relief necessary in order to give the petitioner the privacy he needs and that it would be a hardship not to grant the relief. Mr. Jackson seconded the motion. The vote was four in favor and one opposed. Voting in favor were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz and Mr. Jackson. Voting against was: Mr. Taylor.

ADMINISTRATIVE ISSUES:

Mr. Taylor made a motion to approve the June 6, 2007 minutes of the Tiverton Zoning Board of Review meeting as written. Ms. Gescheidt and Ms. Krumholz abstained due to the fact they were not present at the June 6th meeting. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson and Mr. Taylor.

Mr. Ruggiero presented the Board with a hand-out of an appeal from an affirmative decision of a zoning board in Newport. Mr. Ruggiero summarized the hand-out and stated the Court talks about the decision made by the Newport Zoning Board, that the allegation by the appellant is that the board didn't really discuss the case efficiently on the record and what the attorney wrote in the decision didn't reflect the record or didn't mimic what the board did. The Chairman asked Mr. Ruggiero that if one of tonight's petitions were appealed would the clerk look only at the board's decision and Mr. Ruggiero stated the clerk will look at the decision letter.

Mr. Ruggiero proceeded to inform the board that some judges will only look at that decision letter and they won't look at the transcript as to the reasons behind that letter. However, Mr. Ruggiero went on to say there are some judges who will read the decision letter and read the record to see if the two comport with each other so there is no general rule.

The Chairman confirmed it is important to submit the minutes and the transcript because if the judge found the board's decision confusing or ambiguous or he had some concern, he could go back to the transcript and reach a decision based on the board's decision on the transcript. Mr. Ruggiero mentioned it is also important to talk on the transcript because the decision letter doesn't incorporate and embrace everything that was said, so having the transcript and dialogue is very important.

Ms. Gescheidt asked Mr. Ruggiero what the status of the Yacht Club case was and Mr. Ruggiero stated there was a trial, post trial memos were submitted and we are just waiting for the judge to render a decision. Mr. Ruggiero stated that whatever happens this board will have nothing further to do on that matter. The Chairman asked whether the case could go to the State Supreme Court and Mr. Ruggiero responded a displeased party could try.

The Chairman entertained a motion to adjourn the meeting. Ms. Krumholz made a motion to adjourn the meeting. Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Taylor and Mr. Jackson.

Whereupon the August 1, 2007 Zoning Board of Review meeting concluded at 8:24 p.m.

ZBR/ssf

C E R T I F I C A T E

I, Salvina Ferreira, Registered Professional Reporter, hereby verify that the foregoing pages 1 – 5 are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 16th day of August, 2007.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009

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